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मध्यप्रदेश राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 512]

भोपाल, शुक्रवार, दिनांक 24 दिसम्बर 2021—पौष 3, शक 1943

नवीन एवं नवकरणीय ऊर्जा विभाग

मंत्रालय, वल्लभ भवन, भोपाल

भोपाल, दिनांक 24 दिसम्बर 2021

क्रमांक- F6-9/2020/साठ मंत्रि-परिषद की दिनांक 23.11.2021 को संपन्न बैठक में प्रदेश में स्वीकृत 1500 मेगावाट क्षमता के सौर ऊर्जा पार्कों से उत्पादित होने वाली विद्युत में से मध्यप्रदेश पावर मैनेजमेंट कंपनी लि. द्वारा क्रय की जाने वाली विद्युत के भुगतान की सुनिश्चितता हेतु राज्य शासन की गारंटी का फार्मेट अनुमोदन किया है, अब इसका प्रकाशन "मध्यप्रदेश राजपत्र (असाधारण)" में किया जाता है। इस गारंटी का निष्पादन मध्यप्रदेश शासन की ओर से ऊर्जा विभाग के द्वारा किया जायेगा।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
विवेक पोरवाल, सचिव.

DRAFT OF GUARANTEE OF THE STATE OF MADHYA PRADESH¹*(To be executed on stamp paper of appropriate value for each MPPMCL PPA)*

This guarantee (**Guarantee**) is made at Bhopal, Madhya Pradesh, India, on this [●] day of [●], 2021 by the Governor of Madhya Pradesh (hereinafter referred to as the **Guarantor**, which expression shall, unless repugnant to the subject or context thereof, include its successors, assigns and permitted substitutes).

Further to the "Policy for Implementation of Solar Power Based Projects in Madhya Pradesh, 2012", notified by the New and Renewable Energy Department, Government of Madhya Pradesh (**NRED**), as amended from time to time (**MP Solar Policy**), the Government² of Madhya Pradesh (**GoMP**) has decided to set up a solar park having an aggregate capacity of 550 MW on identified land parcels in Agar district in the State of Madhya Pradesh. The solar energy generated from the units is envisaged to be supplied to: (i) M.P. Power Management Company Limited, a wholly owned company of the GoMP (referred to as **MPPMCL**, which expression will, unless it is repugnant to the subject or context thereof, include its successors and assigns); and (ii) West Central Railway.

In order to select appropriately experienced private entity(ies) to develop the units, Rewa Ultra Mega Solar Limited (**RUMSL**) invited proposals from all interested entities by launching a single stage two-envelope competitive bidding process followed by a reverse auction process pursuant to a request for proposal issued on 26 January 2020 (**RFP**). Pursuant to the terms of the RFP, [insert name of the selected bidder] submitted its bid. Following the process of selection of bidders, as set out in the RFP, RUMSL accepted [insert name of the selected bidder]'s bid to develop [insert the number of units in respect of which letter of award has been issued] number of unit(s) comprising [insert the aggregate capacity of the units in MW for which letter of award has been issued] MW capacity. Subsequently, RUMSL issued the letter of award on [●], 2021 to [insert name of the selected bidder] appointing it as the project developer for [insert details of unit(s)].

[[insert name of the selected bidder] has since incorporated [insert name of the SPV], a company incorporated under the Companies Act, 2013, having its registered office at [●]. [insert name of the selected bidder] through its letter dated [●] informed RUMSL, MPPMCL and West Central Railway that [insert name of the SPV] will be the project developer and will be the entity which shall undertake and perform its obligations, including the obligation to enter into this Guarantee.]²

In consideration of [insert name of the SPV] (referred to as the **Company**, which expression will, unless it is repugnant to the subject or context thereof, include its successors and assigns) undertaking to develop, construct, own, operate and maintain [insert details of unit(s)] and to sell energy from the unit(s) to MPPMCL, as specified in the power purchase agreement dated [●] executed between the Company, MPPMCL and RUMSL, as amended from time to time (hereinafter referred to as the **PPA**); and MPPMCL and RUMSL undertaking to perform its obligations set out in the PPA, the Guarantor hereby covenants and agrees as follows:

In this Guarantee, unless the context requires otherwise or defined, capitalised terms shall have the meaning ascribed to them in the PPA.

1. **GoMP Guarantee**

(a) Guarantee of MPPMCL payment obligations

¹ Subject to approval from the Finance department, GoMP.

² If the Selected Bidder is a single entity bidder (and not a consortium or a foreign company) and has elected not to incorporate a SPV to implement the Project, then this portion will be deleted.

The Guarantor hereby irrevocably, unconditionally and without reservation guarantees to pay to the Company, within 15 (fifteen) Days following submission by the Company of a written demand, in accordance with Clause 1(b) of this Guarantee, any and every undisputed sum of money which MPPMCL is liable to pay to the Company under or pursuant to the PPA, including the Tariff Payments, Late Payment Surcharge and any Termination Compensation, and has failed to make such payment in accordance with the terms of the PPA.

Further, the Guarantor hereby irrevocably, unconditionally and without reservation guarantees to pay to RUMSL, within 15 (fifteen) Days following submission by the RUMSL of a written demand, in accordance with Clause 1(b) of this Guarantee, any and every undisputed sum of money which MPPMCL is liable to pay to RUMSL under or pursuant to the PPA with respect to:

- (i) the amounts paid by RUMSL to the Company from the Payment Security Fund in accordance with the PPA against the Monthly Bill/Supplementary Bill (including the interest on such amount as specified in the PPA); and
- (ii) any other amounts to be repaid by MPPMCL to RUMSL, in relation to any payments made by RUMSL to the Company against the Monthly Bill/Supplementary Bill, in accordance with the provisions of the PPA,

and in each case MPPMCL fails to pay such amount to RUMSL in accordance with the terms of the PPA.

The obligations of the Guarantor under this Guarantee are absolute and unconditional.

The Guarantor shall not revoke this Guarantee during its currency, except with the previous express consent of the Company in writing. Further that, notwithstanding receipt of consent to revocation of this Guarantee from the Company, the Guarantor shall not revoke this Guarantee, except with the previous express consent of RUMSL in writing, as far as it applies to the guaranteed payment obligations to RUMSL, during its currency.

(b) Conditions relating to demand

The Company and/or RUMSL shall be entitled to make a demand for payment upon the Guarantor pursuant to this Guarantee, if MPPMCL has failed to pay the Company and/or RUMSL directly any amounts mentioned in Clause 1(a) above, including the Termination Compensation payable by MPPMCL to the Company under the PPA.

Specifically, with respect to the Tariff Payments, the Company shall be entitled to make a demand for payment upon the Guarantor pursuant to this Guarantee if MPPMCL has failed to pay the Company in accordance with the PPA and the Company has failed to realise such amount due from MPPMCL under the PPA by:

- (i) drawing upon the Letter of Credit, in accordance with the provisions of the PPA; and
- (ii) drawing upon the Payment Security Fund, in accordance with the provisions of the PPA.

Any written demand notice made by the Company with respect to demanding Tariff Payments shall state that MPPMCL has failed to fulfil and comply with its payment obligations in accordance with the terms and conditions of the PPA and the Company

has failed to realise such amount due from MPPMCL under the PPA by drawing upon the Letter of Credit and the Payment Security Fund, in accordance with the terms and conditions of the PPA and shall accompany the relevant Monthly Bill and/or the Supplementary Bill, as the case may be.

Any written demand notice made by RUMSL with respect to demanding amounts mentioned in Clause 1(a) shall state that MPPMCL has failed to fulfil and comply with its payment obligations, in accordance with the terms and conditions of the PPA.

(c) Irrevocability, absoluteness and unconditionality

The liability of the Guarantor under this Guarantee shall be irrevocable, absolute and unconditional, irrespective of:

- (b) any change in time, manner or place of payment of sums, now or hereafter, due under the PPA, or any change in any other term of the PPA, save and except any change (undertaken without the consent of the Guarantor) that increases liability of the Guarantor under this Guarantee, in which circumstances the Guarantor shall not be liable to cover the increased liability under this Guarantee;
- (ii) the existence of any claim, setoff, defense or other right which the Guarantor may have against the Company and/or RUMSL, whether in connection with this Guarantee or in connection with any unrelated transaction; or
- (iii) any change in structure, restructuring insolvency, bankruptcy, re-organisation, dissolution or liquidation of MPPMCL, RUMSL or the Company; or any change in ownership of MPPMCL, RUMSL or the Company; or any purported assignment by MPPMCL, RUMSL or the Company; or any other circumstance whatsoever which might otherwise constitute a discharge or defense of the Guarantor.

2. **Payments**

All payments made by the Guarantor hereunder shall be made without set-off or counter-claim and without any deduction or withholding for any reason except, as required by Applicable Law.

3. **Other provisions of the Guarantee**

(a) Continuing Guarantee

This Guarantee shall be a continuing security and accordingly:

- (i) shall extend to cover all amounts due at any time from MPPMCL to the Company and/or to RUMSL under the PPA; and
- (ii) no failure or delay on the part of the Company and/or RUMSL in exercising any right, power or privilege hereunder and no course of dealing between the Company and/or RUMSL and the Guarantor, or MPPMCL (including the grant of any extension of time or other relief), shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

This Guarantee shall remain in full force and effect from the date hereof until the term of the PPA.

Notwithstanding the foregoing, this Guarantee shall continue in effect until: (i) all sums payable under the PPA by MPPMCL to the Company and the RUMSL have unconditionally and irrevocably been paid; and (ii) the sums payable under this Guarantee have been indefeasibly paid in full; and (iii) the Guarantor receives written notice thereof from the Company and/ or RUMSL to that effect. The aforesaid notice is to be issued promptly upon such occurrence.

(b) Additional security

This Guarantee shall be in addition to and not in substitution or derogation of, any other security which the Company and/or RUMSL may, at any time, hold in respect of the obligations of MPPMCL under the PPA.

(c) Immediate recourse

Subject to Clause 1(b), the Company or RUMSL shall not be obligated, prior to taking steps to enforce this Guarantee to:

- (i) take any action, other than as expressly provided herein, or obtain any judgment against MPPMCL in any court;
- (ii) make or file any claim in bankruptcy of MPPMCL;
- (iii) exercise diligence against MPPMCL; or
- (iv) exercise any legal remedies which may be available to it under or in connection with the PPA, or otherwise.

Guarantor's representations and warranties

The Guarantor hereby represents, warrants and undertakes to the Company and RUMSL as follows:

(a) Power and authority

The Guarantor has full power, authority and legal right to incur the obligations provided for in this Guarantee, to execute and deliver this Guarantee and to perform and observe the terms and provisions hereof.

(b) Legal validity

This Guarantee constitutes legal, valid, binding and enforceable obligations of the Guarantor in accordance with the terms contained herein.

(c) Approvals

All necessary action has been taken under the Applicable Laws to authorise the execution, delivery and performance of this Guarantee.

(d) Direct obligations

All of the obligations and covenants of the Guarantor contained herein constitute unconditional and direct obligations of the Guarantor.

Notices

All notices, demands or other communications required to be given, in relation to this Guarantee shall be in writing in English language and shall be addressed to the Guarantor, MPPMCL, RUMSL or the Company, as the case may be, at the following addresses (or to any other address in India, as provided by either party to the other in writing):

Guarantor:	Department of Energy, Govt. of Madhya Pradesh, Mantralaya, Vallabh Bhawan, Bhopal (MP), 462004, India
RUMSL:	Urja Bhawan, Link Road No. 2, Shivaji Nagar, Bhopal – 462003
MPPMCL:	Block No. 11, Ground Floor, Shakti Bhawan, Rampur, Jabalpur - 482008, Madhya Pradesh, India
Company:	[•]

6. Miscellaneous provisions

(a) Waiver, remedies cumulative

No failure on the part of the Company and/or RUMSL to exercise, and no delay on the part of the Company and/or RUMSL in exercising any right or remedy hereunder shall operate as a waiver thereof.

No single or partial exercise of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy.

No waiver by the Company and/or RUMSL shall be effective unless it is in writing.

The rights and remedies of the Company and/or RUMSL herein provided are cumulative and not exclusive of any rights or remedies provided by Applicable Law.

(b) Assignment

The parties hereto shall not assign or transfer all or any part of their respective rights or obligations hereunder without the prior written consent of the other party(ies), which consent shall not be unreasonably withheld.

Notwithstanding the above, the Company shall be permitted to assign its right, interests and benefits under this Guarantee to Lenders as Security for the Financial Assistance, without the prior consent of the Guarantor, MPPMCL or RUMSL.

(c) Governing law and jurisdiction:

The rights and obligations of the parties under or pursuant to this Guarantee shall be governed by and construed in accordance with Indian laws and shall be subject to the exclusive jurisdiction of the courts at Bhopal.

(d) If any one or more of the provisions contained in this Guarantee are or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not, in any way, be affected or impaired thereby, and the Guarantor shall enter into good faith negotiations with MPPMCL to replace the invalid, illegal or unenforceable provision(s).

(e) Dispute resolution

(i) Amicable settlement

Either party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Guarantee (**Dispute**) by giving a written notice (**Dispute Notice**) to the other party, which shall contain:

- (A) a description of the Dispute;
- (B) the grounds for such Dispute; and
- (C) all written material in support of its claim.

- (ii) The other party shall, within thirty [30 (thirty)] Business Days of issue of Dispute Notice issued under Clause 6(e)(i) above, furnish:
- (A) counter-claim and defences, if any, regarding the Dispute; and
 - (B) all written material in support of its defences and counter-claim.
- (iii) Within [30 (thirty)] Business Days of issue of Dispute Notice by any party pursuant to Clause 6(e)(i) if the other party does not furnish any counter claim or defence under Clause 6(e)(ii) or [30 (thirty)] Business Days from the date of furnishing counter claims or defence by the other party; both the parties to the Dispute shall meet to settle such Dispute amicably (**Dispute Meeting**). If the parties fail to resolve the Dispute amicably within thirty [30 (thirty)] Business Days from the later of the dates mentioned in this Clause, the Dispute shall be referred for dispute resolution in accordance with Clause 6(e)(iv).
- (iv) Dispute resolution through arbitration
- (A) *Arbitration procedure*
 If a Dispute is not resolved within 30 (thirty) Business Days after the service of a Dispute Notice and, whether or not a Dispute Meeting has been held, any party to the Dispute shall be entitled to refer the Dispute to arbitration (**Notice of Arbitration**) to be finally resolved in the manner set out in this Clause 6(e).

 This Guarantee and the rights and obligations of the parties shall remain in full force and effect pending the award in such arbitration proceeding.
 - (B) *Appointment of arbitrators*
 If a Dispute is referred to arbitration by any party, then such Dispute shall be resolved by a sole arbitrator to be appointed by mutual agreement of the parties. If parties fail to appoint an arbitrator within [30 (thirty)] Business Days after service of the Notice of Arbitration, then such arbitrator shall be appointed in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as amended from time to time.
 - (C) *Venue, language and rules of arbitration*
 The seat of the arbitration shall be New Delhi, however the venue of the arbitration shall be in Bhopal and the language of the arbitration shall be English.

 The arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996, as amended from time to time.
 - (D) *Award and apportionment of costs*
 The arbitration award of the arbitrator shall be final and binding on the parties and shall be enforceable in accordance with its terms. The arbitrator shall state reasons for its findings in writing.

 The cost of arbitration and the manner of bearing such costs shall be determined by the arbitrator.

During the dispute resolution proceedings, the rights and obligations of the parties shall remain in force and this Guarantee shall remain operative and no

payments due under this Guarantee shall be withheld except any payment in dispute.

(f) Amendment

Notwithstanding anything contained herein that may be construed to the contrary, this Guarantee may be amended, supplemented or modified only with written consent of the Guarantor, RUMSL and the Company.

(g) Sovereign immunity

The Guarantor acknowledges that this Guarantee constitutes a commercial act and that the Guarantor is not entitled to, nor shall it claim, sovereign immunity with respect to this Guarantee.

IN WITNESS WHEREOF, this Guarantee has been executed as of the day and year first written above.
FOR AND ON BEHALF OF THE GOVERNOR OF MADHYA PRADESH.

Name:

Designation:

Witnesses:

Name:

Name:

Accepted and Agreed:

FOR AND ON BEHALF OF [insert name of the Company]

Name:

Title:

Witnesses:

Accepted and Agreed:

FOR AND ON BEHALF OF M.P. POWER MANAGEMENT COMPANY LIMITED

Name:

Title:

Witnesses:

Accepted and Agreed:

FOR AND ON BEHALF OF REWA ULTRA MEGA SOLAR LIMITED

Name:

Title:

Witnesses: